

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 KEITH RAWLINS,

10 Plaintiff,

11 v.

12 HENRY TAMBE,

13 Defendant.

CASE NO. C19-0093-JCC

ORDER

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15 This matter comes before the Court on Plaintiff's objections (Dkt. No. 43) to the report
16 and recommendation of the Honorable Mary Alice Theiler, United States Magistrate Judge (Dkt.
17 No. 42). Having thoroughly considered the parties' briefing and the relevant record, the Court
18 finds oral argument unnecessary and hereby issues the following order.

19 Plaintiff is currently incarcerated at Washington Corrections Center in Shelton,
20 Washington. (Dkt. No. 42 at 1.) Plaintiff, proceeding *pro se* and *in forma pauperis*, brings claims
21 against Defendant pursuant to 42 U.S.C. § 1983. (*Id.*; see Dkt. No. 4.) Plaintiff alleges that
22 Defendant was deliberately indifferent to Plaintiff's serious medical needs and that Defendant
23 retaliated against Plaintiff. (Dkt. No. 42 at 1–2.) Defendant moved to dismiss for failure to state a
24 claim. (See Dkt. No. 35.) After conducting a thorough review of the record and relevant legal
25 authority, Judge Theiler recommends: dismissing with prejudice Plaintiff's medical deliberate
26 indifference claim premised on Defendant's attempt to administer an antibiotic to which Plaintiff

1 is allergic; dismissing without prejudice and with leave to amend Plaintiff's remaining medical
2 deliberate indifference claims; and dismissing without prejudice and with leave to amend
3 Plaintiff's retaliation claims. (Dkt. No. 42 at 2–10.)

4 Plaintiff has filed objections to Judge Theiler's report and recommendation. (*See* Dkt.
5 No. 43.) But Plaintiff has not offered specific objections to Judge Theiler's proposed findings
6 and recommendation. *See* Fed. R. Civ. P. 72(b)(2). Rather, Plaintiff reiterates his complaint's
7 factual assertions, raises several novel factual allegations, and asks that he be granted additional
8 time to properly amend his complaint in light of his impending transfer to another facility. (*See*
9 Dkt. No. 43 at 2–7.) Therefore, Plaintiff has not identified grounds for rejecting or modifying
10 Judge Theiler's report and recommendation. *See* Fed. R. Civ. P. 72(b)(3). However, the Court is
11 sympathetic to Plaintiff's request for additional time, and he shall be accorded the same.

12 For the foregoing reasons, the Court ORDERS as follows:

- 13 1. Plaintiff's objections (Dkt. No. 43) are **OVERRULED**;
- 14 2. The report and recommendation (Dkt. No. 42) is **ADOPTED**;
- 15 3. Defendant's motion to dismiss (Dkt. No. 35) is **GRANTED** in part and **DENIED** in part;
- 16 4. Plaintiff's claim of medical deliberate indifference through an attempt to administer
17 antibiotics to which Plaintiff is allergic is **DISMISSED** with prejudice;
- 18 5. Any remaining claims of medical deliberate indifference and Plaintiff's claims of
19 retaliation are **DISMISSED** without prejudice and with leave to amend. Plaintiff may file
20 an amended complaint no later than 60 days from the date this order is issued; and
- 21 6. The Clerk is **DIRECTED** to send copies of this order to Plaintiff and to the Honorable
22 Mary Alice Theiler.

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1 DATED this 18th day of September 2019.

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5 John C. Coughenour
6 UNITED STATES DISTRICT JUDGE
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